

ORIGINAL

FILED

JAN 13 1995

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9 Attorneys for Plaintiffs

10 UNITED STATES DISTRICT COURT

11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 13 JAMES ARMSTRONG, JAMES AMAURIC, RICHARD  
 14 ROMANO, JACK SWENSEN, BILLY BECK,  
 15 JUDY FENDT, WALTER FRATUS, GREGORY  
 SANDOVAL, DARLENE MADISON, PETER  
 16 RICHARDSON, STEVEN HILL, and all others  
 similarly situated,

17 Plaintiffs,

18 v.

19 PETE WILSON, Governor of the State of  
 20 California, JOSEPH SANDOVAL, Secretary  
 of Youth and Corrections Agency, JAMES  
 21 GOMEZ, Director of the Department of  
 22 Corrections, KYLE S. MCKINSEY, Deputy  
 Director for Health Care Services,  
 23 KEVIN CARRUTH, Deputy of the Planning  
 and Construction Division, DAVID  
 24 TRISTAN, Deputy Director of the  
 Institutions Division, MARISELA MONTES,  
 Deputy Director of the Parole and  
 Community Services Division,

25 Defendants.

26 No. C-94-2307 CW

27 [Proposed]  
 ORDER CERTIFYING  
 THE CLASS

1           The motion of plaintiffs JOHN ARMSTRONG, JAMES AMAURIC,  
2           RICHARD PONCIANO, JACK SWENSEN, BILLY BECK, JUDY FENDT, WALTER  
3           FRATUS, GREGORY SANDOVAL, DARLENE MADISON, PETER RICHARDSON, and  
4           STEVEN HILL for class certification under Federal Rules of Civil  
5           Procedure, Rules 23(b)(1)(A), 23(b)(1)(B) and 23(b)(2) came on  
6           regularly for hearing before this Court on October 28, 1994.  
7           Warren George, appeared as counsel for plaintiffs and James  
8           Humes, Deputy Attorney General appeared as counsel for  
9           defendants.

10           After considering the moving and opposition papers, the  
11           arguments of counsel and all other matters presented to this  
12           Court, this Court makes the following findings of fact:

13           A.    The prerequisites to maintenance of a class action set  
14           forth in Federal Rule of Civil Procedure 23(a)(1-4) are met in  
15           that:

16                   (1)   The class of all present and future California  
17                   state prisoners and parolees with mobility, sight, hearing,  
18                   learning and kidney impairments that substantially limit one or  
19                   more of their major life activities, except those prisoners with  
20                   mobility impairments housed at the California Medical Facility,  
21                   is so numerous that joinder of all members is impracticable;

22                   (2)   There are questions of law and fact common to all  
23                   members of the class;

24                   (3)   The claims of the representative parties are  
25                   typical of the claims of the class; and

26                   (4)   The representative parties will fairly and  
27                   adequately protect the interests of the class.  
28

1 B. A class action is maintainable under Federal Rule of  
2 Civil Procedure 23(b)(1)(A), 23(b)(1)(B) and 23(b)(2) in that:

3 (1) The prosecution of separate actions by individual  
4 members of the class would create a risk of (a) inconsistent or  
5 varying adjudications with respect to individual members of the  
6 class which would establish incompatible standards of conduct for  
7 defendants and (b) adjudications with respect to individual class  
8 members which would as a practical matter be dispositive of the  
9 interests of the other members who are not named parties; and

10 (2) In maintaining its current policies and practices  
11 with respect to prisoners and parolees with the named  
12 disabilities, defendants have acted or refused to act on grounds  
13 generally applicable to the class. Therefore,

14 IT IS HEREBY ORDERED that plaintiffs' motion for class  
15 certification is GRANTED. The class shall consist of all present  
16 and future California state prisoners and parolees with mobility,  
17 sight, hearing, learning and kidney disabilities that  
18 substantially limit one or more of their major life activities,  
19 except those prisoners with mobility impairments housed at the  
20 California Medical Facility.

21 Dated: ~~December~~ <sup>JAN 13 1995</sup> ~~1994~~

22  
23 

24 CLAUDIA WILKEN  
25 UNITED STATES DISTRICT JUDGE

26 Approved for form:

27   
28 GEORGE PRINCE  
Attorney for defendants

DECLARATION OF SERVICE BY MAIL

Case Name: *John Armstrong, et al. v. Pete Wilson, et al.*

USDC N.D. Case No. C-94-2307 CW

I am employed in the County of San Francisco, California. I am over the age of 18 years and not a party to the within entitled cause; my business address is 455 Golden Gate Avenue, Room 6200, San Francisco, California 94102-3658.

On December 1, 1994, I served the attached

[PROPOSED] ORDER CERTIFYING THE CLASS

in said cause, placing, or causing to be placed, a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at San Francisco, California, addressed as follows:


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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed at San Francisco, California on December 1, 1994.

  
D. SCHOTT